

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 518 OF 2005

In the matter of M/s. Zadona
Electronics Ltd.(formerly known
as M/s. Bush India Ltd.)

Smt. Kusum Jinappa Pujari & Ors. ... Petitioners.

Ms. Jane Cox for the Petitioners.
Mr. Mohan Kumar for Adarsh Kamgar Sabha.
Ms. Sheetal Kumar i/b. S.D. Naik for Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. The Petition for winding up under Section 433(e)
and Section 434 of the Companies Act, 1956 has been
instituted by the widow of a former employee and by two
former employees of the Company in question, M/s.
Zadona Electronics Ltd.

2. On 6th August 1992, the Company which was
formerly known as Bush India Limited notified a scheme
for voluntary retirement. The terms of payment
stipulated in the scheme furnished an option to the
workmen who opted for voluntary retirement to place
their retiral dues on deposit with the company.
Incentives ranging from 18 to 24% interest per annum

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were offered to the workmen on deposits of a duration between 18 and 36 months. The relevant part of the notice provided as follows :-

"II PAYMENT TERMS

(a) Encashment of leave/notice pay/gratuity within one month from acceptance of application.

(b) Earliest settlement of provident fund dues with the Regional Provident Fund Commissioner.

(c) Work out Retrenchment/Retirement Compensation and credit to the retiring workmen's account.

(d) The retiring workman/employee shall have option to retain the Retrenchment /Retirement compensation amount with the Company, if they so desire."

"The Company shall pay incentives at the following rates on the amounts retained with the Company :

(i) If the Option to retain the amount is for 18 months, 18% p.a. incentive.

(ii) If the Option to retain the amount is for 24 months, 21% p.a. in incentive.

(iii) If the Option to retain the amount is for 36 months, 24% p.a. incentive.

Incentives will be dispatched to the workmen/employees to their given address every month."

3. On 7th August 1992, the Company issued a further clarification inter-alia stating that the workmen were entitled to deposit their provident fund dues, gratuity or "any other monies which were available with them" and the same rate of incentives would be paid.

4. The spouse of the First Petitioner deposited an amount of Rs.12,000/- on 21st November 1992 for a term of 36 months. The deposit receipt provided that interest at 15% per annum would be paid and the deposit would mature on 21st November 1994. The Second and Third Petitioners similarly deposited amounts of Rs.50,000/- and Rs. 25,000/- and to them as well deposit receipts were issued. Neither were the deposits nor were the interest amounts paid to the Petitioners upon which a statutory notice prior to the institution of the Petition was issued on 11th November

2005. There was no reply thereto. In the meantime, some of the secured creditors had instituted proceedings against the Company in which a Receiver was appointed. The Court Receiver addressed letters forwarding copies of the statutory notice inter-alia to the Advocates of the secured creditors.

5. The debt has not been, as it cannot be, disputed. In an affidavit dated 28th March 2007 filed in these proceedings on behalf of the Petitioners it has been stated that the dues owing by the Company to 155 workmen upto 31st December 2006 amount approximately to Rs. 19.27 crores. The Company does not dispute its liability to pay the Petitioners or the debt due to the other workmen. On the contrary, the submission that has been urged at the hearing of the Company Petition is that the workmen had taken recourse to their remedies under the Industrial Disputes Act, 1947 for the recovery of their outstanding dues and by an order dated 18th August 2006, applications filed under Section 33C(2) were allowed by the Labour Court. Similarly, it has been urged that a Recovery Certificate has already been issued by the Debt Recovery Tribunal in proceedings instituted by ICICI Bank (the debt since having been assigned to Kotak Mahindra Bank). It has also not been disputed before the Court that there are other secured creditors before

the Debt Recovery Tribunal. The Company has stated before the Court that a Notice of Motion was taken out in Suit 1466 of 1994 for a direction to the Receiver appointed by this Court to grant his permission to M.I.D.C. for conversion of the land of the Company at Wagle Estate into an Information Technology Park and the Motion was accordingly made absolute on 21st April 2005. The case of the Company is that in the circumstances, it would be desirable that all the workers abide by the process of the conversion of the land at Wagle Estate into an Information Technology Park in the ultimate hope that the repayment of the dues of the workmen would be eventually effected.

6. The entitlement of the workmen to present a Petition of this nature cannot be disputed in view of the Judgment of a Division Bench of this Court in **Khandelwal Tube Mill Kamgar Sangh, Kanhan V/s. Government of Maharashtra** 2006 1 CLR 51. The Division Bench overruled the view taken by a learned Single Judge of this Court in **Mumbai Labour Union V/s. Indo-French Time Industrial Limited** (2001) 3 CLR 493 that the workmen could not maintain a petition for winding up. While referring to the Judgment of the Supreme Court in **National Textile Workers Union V/s. P.R.Ramkrishnan** AIR 1983 SC 75, the Division Bench held that the aforesaid decision was not in respect of a

Petition for winding up **filed** by the workmen or a union and the issue was whether in a case for winding up, the Union had locus standi to move the Company Court either to support or oppose the Company Petition for winding up. The Division Bench held that workmen to whom dues are outstanding by the Company are creditors under Section 439 of the Companies Act, 1956 and a Petition for winding up could be maintained by such workmen as creditors and not as employees :

" Under Section 529(A) of the Companies Act brought by the amendment in 1985, the dues of workmen are considered pari passu with other secured creditors. In other words in the Companies' Act itself, Parliament itself has taken note of the fact the workmen dues in a case of winding up have to be placed on the same footing as secured creditors and have so treated workers dues. Even otherwise it will be difficult to hold that a workman like any other creditor to whom the company is indebted will not fall under the expression creditor under Section 439 of the Companies Act. Merely because there are other Legislations, providing a forum for the workmen to apply for recovery of their dues cannot be an answer to deny to the workman as a creditor the right to file a

petition for winding up as the jurisdiction of the Company Court is neither expressly or impliedly barred by any labour legislation. The provisions of winding up are initiated in the case where the company is unable to pay its debts. It is not per se a suit for recovery of dues. It is a petition for winding up of the company which is unable to pay its dues. The learned Single Judge appears not to have considered this aspect of the matter and appears to have been solely guided by the judgment in National Textile Workers Union (supra). We may make it clear that the petition for winding up by a workman would be as a creditor and not as a workmen of the Company."

In view of the Judgment of the Division Bench, the legal position has not been disputed before the Court in the course of submission in these proceedings.

7. In the judgment in **Rajasthan Financial Corporation v/s. the Official Liquidator** AIR 2006 SC 755, the Supreme Court considered the powers of the Company Court in a case where proceedings are initiated inter alia under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Supreme Court held thus :-

" Thus, on the authorities what emerges is that once a winding up proceeding has commenced and the liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with the association of the Official Liquidator and under the supervision of the Company Court. The right of a financial institution or of the Recovery Tribunal or that of a financial corporation or the Court which has been approached under Section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the Company Court the right to ensure that the distribution of the assets in terms of Section 529A of the Companies Act takes place."

8. The Supreme Court noted that the right to sell inter-alia under the State Financial Corporations Act or the RDB Act by creditors standing outside the winding up proceedings is different from the

distribution of the proceeds of the sale. The Liquidator, the Supreme Court held, represents the entire body of creditors and also the workers who have a right to have distribution pari passu with the secured creditors. In other words, the distribution of the sale proceeds under the direction of the Court is his responsibility. In order to ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure under the direction of the Company Court that a proper price is realised for the assets of the company in liquidation.

9. In so far as the facts of the present case are concerned, it is apparent that a debt is due and owing to the workmen. That debt now has crystalized into the workmen being creditors of the Company. The three Petitioners before the Court had invested various amounts with the Company and the Company had issued deposit receipts for the payment of the principal together with interest which has remained to be paid. There has been a default by the company and at the hearing of the Company Petition, it has been fairly accepted by Counsel on behalf of the Company that the Company is unable at the present time to pay the debts due and owing to the Petitioners. The Petitioners cannot wait indefinitely on the promise that upon the

conversion of the premises at Wagle Estate into an Information Technology Park, monies may be available for payment to the workers. That is an indefinite possibility for an uncertain future. No proposal is forthcoming on behalf of the Company. No coherent details or plea have been advanced at the hearing.

10. In the circumstances, an order of winding up would have to be passed. The Company is unable to pay its debts.

11. The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b). It is however, clarified that the possession of the Court Receiver who has already been appointed in pursuance of proceedings adopted by the secured creditors shall not be disturbed by the Official Liquidator. The Official Liquidator shall however, be kept apprised of all the steps which are taken by the Recovery Officer before the Debt Recovery Tribunal consistent with the directions of the Supreme Court Judgment in **Rajasthan Financial Corporation** (Supra).
